

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4188 of 1986

with

SPECIAL CIVIL APPLICATION No 1104 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? Yes.
 2. To be referred to the Reporter or not? Yes :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No.
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.
 5. Whether it is to be circulated to the Civil Judge? : NO
No.

HR MISHRA .

Versus

STATE OF GUJARAT

Appearance:

MR RK MISHRA, for Petitioner

MR CC BHALJA ASSTT. GOVT. PLEADER for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision:-28/07/1999.

C.A.V. JUDGEMENT

Both these petitions arise out of the removal

order of the petitioner. Hence, both these petitions are being disposed of by this common judgment.

2. In Special Civil Application No. 1104/90 the petitioner has prayed for quashing the order of removal dated 9-2-1990 and for a direction to the respondents to reinstate the petitioner in the service with back wages and all other consequential benefits. While other petition being Special Civil Application No.1188 of 1986 was filed by the petitioner for quashing the order of removal dated 27-6-1986 and for restraining the respondents from removing the petitioner from service pursuant to the aforesaid order.

3. The petitioner was working as a Section Officer in the Home Department as Gazetted Class-II Officer. He was placed under suspension by the resolution dated 26-5-1986 and a regular departmental inquiry was directed to be held against the petitioner on the allegations that an application dated 5-3-81 was made by Smt. Rajendra Kaur wife of Shri Bhupendrasingh Chauhan who was working as Company Commander, S.R.P. Group-VII, Nadiad and that application was for transferring her husband at Ahmedabad or Godhara and that application dated 5-3-81 was received by the petitioner on 9-4-1981. A written proposal dated 6-4-1981 was made for transfer of Shri Chauhan at Ahmedabad or Vadodara. With the purported signature of Shri N. Gopalaswami, the then Joint Secretary dated 16-4-1981 taking such action as if sanction has been accorded to the proposal regarding the transfer by sending a copy of the application of Shrimati Rajendra Kaur to Shri H.C. Oza, Administrative Officer, the office of I.G.P., Ahmedabad vide confidential letter dated 1-5-1981 of the Home Department for taking action of transferring her husband at Ahmedabad and the petitioner had given direction in the name of the Government. In this manner, the petitioner by making a false signature of the Joint Secretary N. Gopalaswami committed irregularity and misused his own designation. On the basis of the aforesaid allegations, the petitioner was placed under suspension by order dated 26-5-86 and the charge sheet was prepared on 10-9-82 and served on the petitioner and the petitioner also filed his defence statement by the letter dated 9-11-1982. The departmental inquiry against the petitioner was directed to be conducted by the Special Officer for the departmental inquiries (for gazetted officers), Ahmedabad. The Inquiry Officer after completing the departmental inquiry submitted his report to the Government by the letter dated 27-2-1984 wherein the charges levelled against the petitioner were said to be

proved. In the inquiry, the charges against the petitioner were found proved and looking to the seriousness of misconduct and indiscipline in taking personal active interest in making transfer of one police officer and in doing irregular activities and misuse of his designation, the Government came to the conclusion that the petitioner shall be discharged by resolution dated 27-6-86 from the government service with immediate effect under Rule 9 and 10 read with Rule 6 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1976 and the petitioner was removed from 27-6-86.

4. Gujarat Public Service Commission has already given its consent and the petitioner was removed from the Government service.

5. The petitioner Preferred Special Civil Application No. 4188 of 1986 before this Court. This Court vide order dated 26-9-1988 allowed the petition in part and the impugned order dated 17-6-1986 passed by the Disciplinary Authority i.e. the State Government removing the petitioner was set aside and the petitioner was directed to be reinstated in service and status-quo as to which existed before passing of the impugned order of the Disciplinary Authority was restored. Since the petitioner was under suspension before the order of removal was passed, he was directed to continue to remain under suspension. The respondents were also directed to pay arrears of subsistence allowance permissible under the Rules from the date of passing of the order of removal to the date of his reinstatement in service and to pay regularly every month until final order is passed by the Disciplinary Authority. The Disciplinary Authority was further directed to supply inquiry report to the petitioner and continue the inquiry from the stage of submissions of the Inquiry Officer's report and complete it before December, 1988 as the copy of the inquiry report was not supplied to the petitioner before passing the impugned order of removal.

6. The State Government went in Letters Patent Appeal before the Division Bench against the decision of the learned Single Judge. The Letters Patent Appeal being No. 498/98 was admitted but the order of the learned Single Judge was not suspended by the Division Bench of this Court, the State Government preferred Special Leave to appeal before the Supreme Court. The Special Leave Petition was withdrawn on 30-5-89 with the permission of the Court. The Division Bench of this Court on 25-11-1993 allowed Letters Patent Appeal and set aside the order of the learned Single Judge passed in

Special Civil Application No. 4188/86 and the Special Civil Application No. 4188/86 was directed to be remitted back to the file of the learned Single Judge for disposal a fresh in light of the observations made in the judgment.

7. The Division Bench of this Court allowed the Letters Patent Appeal holding that it is not obligatory for the disciplinary authority to provide copy of the inquiry report to the petitioner if rules do not require and directed learned Single Judge to pass appropriate order ignoring the fact that the copy of the inquiry report was not supplied to the petitioner. But before the order of the Division Bench of this Court was passed the order of the learned Single Judge was already implemented and a copy of the inquiry report was supplied to the petitioner and the petitioner required the copy of the few documents and he submitted his defence statement against the show cause notice. The Gujarat Public Service Commission had agreed with the proposal of the State Government dated 22-1-90 for removal of the petitioner. The petitioner was again removed from the Government service by fresh removal order dated 9-2-1990. Hence the petitioner filed another writ petition being Special Civil Application No. 1104/90. The Division Bench of this Court passed the order dated 25-11-1993 wherein it is stated that Special Civil Application No. 1104/90 is between the same parties as in, and the controversy has stemmed out practically out of the controversy subject matter of, Special Civil Application No. 4188/86. The Division Bench allowed Letters Patent Appeal NO. 498/88 arising out of Special Civil Application No. 4188/86 and remitted Special Civil Application No. 4188/86 for a disposal de-nova. It is further directed that it would be appropriate that that Special Civil Application No. 1104/90 should be dealt with with Special Civil Application No. 4188/86 and directed to list Special Civil Application No. 1104/90 along with Special Civil Application No. 4188/86 for disposal before the learned Single Judge. Hence, these two petitions were heard together and are being disposed of finally by this common judgment.

8. Learned counsel for the petitioner contended that in the present case no preliminary inquiry has been held. As such, regular inquiry in absence of preliminary inquiry is bad and is not sustainable in the eye of law. On the contrary learned State Counsel submitted that it is not necessary in each case that preliminary inquiry should be conducted and in absence of preliminary inquiry, regular departmental inquiry if held will not be

vitiated on this ground and he relied on two decisions (i) in the case of The Secretary to Government of Tamil Nadu Vs. D. Subramanyam Rajadevan, reported in 1996 (4) S.L.R. 498, wherein it is held that there is no such principles of natural justice that before holding a regular departmental enquiry the disciplinary authority itself should hold a preliminary enquiry by first drawing up a charge memo and then calling for written statement of defence before taking a decision to hold a regular departmental inquiry and (2) in the case of Kaushik T. Patel Vs. Gujarat Water Resources Development Corporation Ltd. reported in 1997 (4) S.L.R 82, wherein it has been held that it is not necessary that formal charge-sheet or statement of allegations must be issued to an employee. It is, no doubt, true that before taking an action of suspension, it is open to an employer to hold preliminary inquiry. But, it is not incumbent to the employer that in all cases preliminary inquiry must precede regular inquiry or such inquiry must be conducted before forming an opinion as to whether departmental proceedings should be initiated. It depends upon facts and circumstances of each case and in the light of attendant circumstances, an employer can take appropriate decision in accordance with law. In view of the decisions of two cases stated above the contention of the learned counsel for the petitioner that the preliminary inquiry should precede to the regular departmental inquiry is not sustainable in the eye of law.

9. Learned counsel for the petitioner referred to the note dated 26-9-81 of Shri N. Gopalaswami from which it appears that Shri N. Gopalaswami doubted his signature only on the basis of the word "a" after the word "l" in his signature was missing and suspected the mischief of the petitioner on the ground that the application dated 5-3-81 was received by him personally and a letter was sent under the signature of Mr. Mishra. He further referred to statement of Shri N. Gopalaswami recorded by the Inquiry Officer wherein the witness has stated "When he inquired from petitioner about the signature, in the beginning the petitioner had not admitted as to something has been done by him in the matter. But subsequently immediately he had tendered apology before me at that time." Learned counsel for the petitioner submitted that the petitioner has never admitted that the signature of Shri N. Gopalaswami was fabricated by him. In this connection, he put a question to the witness Shri N. Gopalaswami before the Inquiry Officer to which he replied that he did not remember of having asked that Mishra had informed him at that time this letter was issued by him without verifying his

signature. he could not give any opinion with regard to the fact that as to whether Mishra had reached his house for confession of this thing or for any other work. But it was true that he had reached his house with one file. He has also referred to from the defence statement filed by him in reply to the show cause notice wherein he has stated that he had not confessed the matter and he requested to apologize him for not verifying the signature of Shri N. Gopalaswami before taking any opinion thereon and he also placed reliance on the defence statement made against the charges at the initial stage that he requested for apology only for the fact that he had not closely verified the signature of Shri N. Gopalaswami and forwarded the file to the higher authority for action. Thus, the learned counsel for the petitioner contended that the petitioner had never confessed that he had forged the signature of Shri N. Gopalaswami. He asked Shri N. Gopalaswami to apologize him only for the fact that he had not closely verified the signature of Shri N. Gopalaswami. The signature might have been forged by other person against whom he has enmity and he had also made proposal for transferring him from the department. As such, the fault on the part of the petitioner was only that he had not closely verified the signature of Shri N. Gopalaswami and forwarded the same to the higher authority for action. In this regard he referred the observations, of Hon'ble Parikh, J. in the order dated 16-1-1996 wherein it is observed that after some amount of submission it has transpired that the Disciplinary Authority has not assigned any reasons with regard to the defence set up by the petitioner, which is inter alia based upon the report of the Hand Writing Expert. However, the gist of the petitioner's defence in the light of the circumstances placed on the record of the Inquiry Proceedings would indicate that in any case the petitioner had displayed some inadvertence in the matter of processing the file without verifying the genuineness of the signature of Shri N. Gopalaswami. It is no doubt true that the charge which the petitioner faced was that he had forged the signature of said Mr. N. Gopalaswami and that on account of some circumstances coming on the record of the inquiry proceeding, the petitioner has been held to have committed the said misconduct of forging the signature of said Mr. N. Gopalaswami. As against this, the petitioner has in his favour the report of the Hand Writing Expert as stated above. In the facts of the petitioner's case, particularly the aforesaid salient feature of the matter, the defence of the petitioner would require appropriate consideration at the hands of the Disciplinary Authority. Pending this submission it

has been submitted by Mr. Joshi learned advocate appearing on behalf of the petitioner, who is also present in the Court, that if, instead of the penalty of removal, some lighter penalty is imposed, the petitioner would consider to forego his other contentions taken in this petition. The suggestion made on behalf of the petitioner is with regard to imposition of lighter/minor punishment of stoppage of one or two increments. Under the aforesaid circumstances, it would be just and proper for the State Government, who is Disciplinary Authority, to consider the aforesaid suggestion and communicate its decision to this Court within a period of two months from the date of the order.

10. Learned State Counsel submitted that the the observation of the learned Single Judge is not based on the material on record as the complete record was not placed before the Court, only the argument was advanced by the learned counsel for the petitioner that there is no evidence or material on record to show that the petitioner made forged signature of the Joint Secretary, the probability is not excluded that some enmical official committed this mischief. It is only fault of the petitioner that he had not verified closely the signature of Shri N. Gopalaswami. For this purpose the petitioner deserves only for minor or lighter penalty in place of major penalty awarded to him. He further contended that the Government reconsidered the case of the petitioner in the light of the observation made by this Court and come to the conclusion by the order dated 14-3-1996 that it is the petitioner who deserves major penalty on the basis of the following circumstances.

(i) The application dated 5-3-81 was received by the petitioner himself and he noted in the margin "Given personally to me on 9/4. as J.S. & U.S. were not available", after the note he made his own initial with the date 9/4 but he prepared note for higher officer on 6-4-81 which processing the application once the application was received on 9-4-81 how can it be possible for him to prepare note on 6-4-81, while processing it as such application was not received by him on 9-4-81.

(ii) In the application dated 5-3-81 the transfer was sought for either at Ahmedabad or Godhara but in the note dated 6-4-81 to I.G P. he suggested for the transfer to Ahmedabad or Baroda after signing the said note he marked to J.S.. After making the aforesaid note he did not

send it to Shri N. Gopalaswami for approval, instead he made forged signature of Shri N. Gopalaswami dated 16.4.

- (iii) The petitioner kept the file with him till 29-4-81 as it should have been sent to Clerk concerned for registering it in the Branch diary. It was registered for the first time on 29-4-81 in the branch diary and its movement should have been noted in this branch diary but no movement of 9/4, 6/4 and 16/4 is noted therein. The file was with the petitioner from 9/4 or 6/4 to 29/4 and made forged signature of Shri N. Gopalaswami.
- (iv) The petitioner gave the file to the Typist on 29-4-81 to get typed D.O. letter prepared by him and got it dispatched on 1-5-81. In the application the transfer was requested for Ahmedabad or Godhra which in the note prepared by him on 6-4-81 he proposed to transfer him to either Ahmedabad or Baroda. After this note the petitioner directed the Administrative Officer of I.G.P. Office vide letter dated 1-5-81 to transfer him at Ahmedabad. This direction was not in consonance of proposal.
- (v) In the marginal note dated 9-4-81 in the application dated 5-3-81 the petitioner made mention that the applicant could not met Joint Secretary while in the D.O. letter dated 1-5-81 to the Administrative Officer, I.G.P. Office, the petitioner has written that the applicant had personally met the Joint Secretary, this statement recorded is false in the D.O.letter.
- (vi) In the note prepared by him on 6-4-81 he proposed for transfer either to Ahmedabad or Baroda but in the D.O. letter dated 1-5-81 he had written that it was Government's order to consider sympathetically to transfer applicant's husband at Ahmedabad. Thus, this statement is also false.
- (vii) From the deposition of Shri N. Gopalaswami it appears that the petitioner tendered apology only for forging the signature of Shri N. Gopalaswami and not for any other count. Shri N. Gopalaswami stated at that time in the beginning he had not admitted that he had done anything in the matter but subsequently he

had tendered apology before him at that time. When he went to home the petitioner went with another file between 3 or 4, at that time he supplicated to give another opportunity.

11. On the facts and circumstances stated above, it was the petitioner who kept the file with him from 9/4 or 6/4 to 29/4 and he did not send it to the clerk concerned for registering it in the Branch Diary regarding inward entry and forged signature of the Joint Secretary purported on 16/4, on or before 29-4-81. For this mischief committed by him he tendered apology to the Joint Secretary. Thus, there was no other person except the petitioner for making forged signature of Shri N. Gopalaswami. He might have committed this act himself or got it done by him from any other person.

12. It was only advertence or negligence on the part of the petitioner but the act of forging the signature is intentional and deliberate. For that he requested the Joint Secretary to apologize him. The contention of the petitioner's counsel foregoing the other contentions at the most the charge of negligence or inadvertence for not verifying carefully the signature of Shri N. Gopalaswami is made out and for that charge the petitioner should be awarded minor or lesser punishment is not sustainable in view of the fact that on the basis of the statement of the learned counsel for the petitioner this Court made an observation that for lighter punishment and asked the Government to reconsider it. As the Government has taken into consideration the suggestion made by this Court and came to the conclusion that the petitioner is not entitled for any lesser or lighter punishment and the whole matter was not argued before the Hon'ble Mr. Justice M.S. Parikh. As such, the question of awarding lesser punishment to the petitioner does not arise.

13. I have considered the submissions made on behalf of the parties. It appears that the learned counsel for the petitioner argued before the Hon'ble M.S. Parikh J. that at the most the charge of negligence of verifying carefully the signature of Shri N. Gopalaswami appears to have been made and complete matter was not produced before Hon'ble Judge concerned. As such, the petitioner's contention regarding lesser punishment without going through the entire material on record the observation or suggestion of Hon'ble M.S. Parikh, J. cannot be considered to have passed after going through all the materials on record. As such, the petitioner's contention for awarding lesser punishment is not sustainable. Moreover, pursuant to the Court's direction

the matter was reconsidered by the Government and it was found on the basis of gravity of charges that the petitioner does not deserve for the minor punishment.

14. Learned counsel for the petitioner next contended that the petitioner was not provided copies of certain documents and copies of statements of certain witnesses recorded during investigation and relied on the inquiry which violates the rule of natural justice and deprives him of an opportunity of hearing for making his defence and effective examination of the witnesses produced in the inquiry and relied on the case of Committee of Management, Kisan Degree College Vs. Sambhu Saran Pandey & Others, reported in 1995 (2) LLJ 625 (SC), the Supreme Court has held as under :

"If the department or the management seeks to rely on any documents in proof of the charge, the principles of natural justice require that such copies of the documents need to be supplied to the delinquent. If that opportunity was not given, it would violate the principles of natural justice. At the enquiry, if the delinquent seeks to support his defence with reference to any of the documents in the custody of the management or the department, then the documents either may be summoned or copies thereof may be given at his request and cost of the delinquent. If he seeks cross examination of the witness examined in proof of the charge him. He should be given the opportunity to cross-examine. In case he was to examine his witness or himself to rebut charge, that opportunity should be given.

15. He further relied on the rule of law laid down by the Supreme Court in the case of State of Madhya Pradesh V/s. Chintaman Sadashiva Waishampayan, reported in AIR 1961 SC 1623, wherein the rule of law has been laid down which reads as under :

"When it was urged before the High Court that the failure to supply the copy of the said report constituted a serious infirmity in the inquiry and amounted thereby to a denial of a reasonable opportunity to the public officer, the High Court repelled the argument and held that the officer was not entitled to a copy of the report unless that report formed part of the evidence before Enquiry Commissioner and was relied upon by him. "When, however, the report was not at all exhibited in the case, nor was it referred to nor

relied upon by the Commissioner" said the High Court "there was no meaning in contesting it, and consequently absence of opportunity to meet its contents involved no violation of constitutional provisions." In our opinion, this decision cannot assist the appellant's case because, as we have already pointed out, the documents which the respondent wanted in the present case were relevant and would have been of invaluable assistance to him in making his defence and cross-examining the witnesses who gave evidence against him. In such a case it would be idle to contend that the infirmities on which the public officer relies flow from the exercise of discretion vested in the inquiry officer. The Inquiry Officer may have acted bona fide but that does not mean that the discretionary orders passed by him are final and conclusive. Whenever it is urged before the High Court that as a result of such orders the public officer has been deprived of a reasonable opportunity, it would be open to the High Court to examine the matter and decide whether the requirements of Articles 311 (2) of the Constitution of India have been satisfied or not."

16. Learned counsel for the petitioner has placed reliance on the decision of the Supreme Court in the case of State of Punjab Vs. Bhagat Ram, reported in AIR 1974 SC 2735, wherein it has been held as under :

"Unless the statements are given to the Government servant he will not be able to have an effective and useful cross examination. It is unjust and unfair to deny the Government servant copies of the witness examined during investigation and produced at the inquiry in support of the charges levelled against the Government Servant."

17. Learned counsel for the petitioner contended that the petitioner requested for supplying the copies of the documents mentioned in para 2.1 of his defence statement dated 28-9-1989 shown at Sr. No 4, 7, 8 and 9. Item no.4 is the statement of Shri N. Gopalaswami dated 26-9-1983. Item no. 7 is the report of the Handwriting Expert and required along with the copy of the report dated 1-3-1982 of the Chief Police Officer C.I.D. Crime. Item No. 8 is the opinion of the hand writing expert produced by the letter dated 16-10-1981 and the Addl. Chief Police Officer (Crime & Railway), Ahmedabad. Item

no. 9 is the Note dated 26-9-1981 of the Joint Secretary Shri N. Gopalaswami. He also submitted that two witnesses Mr. Mukesh Vaidya and Ms. Tiluben Mistry have not been examined and their statements recorded during the investigation were taken into consideration in the inquiry. Hence, their statements should have been provided and they should have also been produced during the inquiry. Though the documents required by the petitioner were supplied by the department after the inquiry was over and the proposal for punishment was sent to the Government these documents are very essential for making his defence. In absence of supply of those documents and copy of the statements of Mr. Vaidya and Ms. Mistry and not examination of these two witnesses would vitiate the proceedings of the inquiry. He also relied on the decisions of the Supreme Court. It is also argued that after supplying the documents required by the petitioner, the inquiry remains as it is. As such, the petitioner has not been given an opportunity to cross-examine the witnesses and lead evidence in that respect. As such, the proceedings of the inquiry are vitiated and are in violation of principles of natural justice. On the contrary, learned State Counsel argued that non-supply of the note of the Joint Secretary Shri N. Gopalaswami and statements of Mr. Vaidya and Mrs. Mistry and the opinion of the Handwriting Expert has not been relied upon by the inquiry officer in his report. As such, the department is not required to supply those documents to the petitioner under the law. Moreover, those documents are not prejudicial to the defence of the petitioner and hence non-supply of those documents would not be relevant.

18. I have given my anxious thought to the submissions made on behalf of the parties. It is true that the statement of Shri Gopalaswami has been referred and it is mentioned in the inquiry report "However, afterwards immediately, he apologized me and when I went home, Shri Mishra had come there at about three to four O'clock with another note and had requested me to give him a second chance and had prepared another note on that day regarding this matter and submitted to the higher officer. This note was got typed when I was in the office. However, before signing the said note I had added in my own handwriting a note that Shri Mishra had come to my place and requested me to give him a second chance." From the statement of Shri N. Gopalaswami it appears that he prepared some note in the office and got typed by him and later on he added something on this note in his own handwritings after the petitioner visited the residence at 3-00 p.m. or 4-00 p.m.. With regard to

that typed note and handwritten note Shri N. Gopalaswami stated before the Inquiry Officer and the Inquiry Officer has relied on that statement and the copy of that note was not supplied to the petitioner. When the petitioner required the copy of the note he was supplied. That note dated 26-9-81 reads as under :

"The file kept below was given to me by US(H) and G.D.C. B.Br. (Shri Ved) about a fortnight back. On perusing the file, I found that the signature purported to be mine was in fact not mine at all. I sign my name as "Gopalaswami" while in the signature after 'l' there is no word 'a' and therefore my conclusion is that my signature has been forged. On the application, there is an endorsement by the S.O., that "the application was received by him personally as the JS and US were not available" A letter was, thereafter issued under the signature of Shri Misra, S.O. B.Br.

While it is possible to say that my signature has been forged and that the suspicion is on Shri Misra, S.O. I am aware that it will be some what difficult to prove that Shri Misra had in fact done this mischief, though the use of finger print expert this is not impossible.

Secretary may pass orders as deem fit in regard to the action to be taken against Shri Misra. I think a departmental action is likely to be swift and conclusive. (Further when I confronted the Shri Misra today he at first stead firstly denied any knowledge but later on pleaded for being pardoned and given one chance."

19. It is submitted by the learned counsel for the petitioner that the copy of this note was not given to the petitioner before the earlier order of removal was passed. Had the copy of this note been given to him, the petitioner would have been in a position to cross-examine the witness Shri N. Gopalaswami with regard to the allegations that at what stage the petitioner requested to apologize him and for what action he requested for the same. From the printed note it does not appear that the petitioner requested to apologize him in the office when he was called upon to explain it. Though from the statement of Shri N. Gopalaswami recorded, it appears that the petitioner requested to apologize him in the office and not at his house. But from the handwritten note which was made subsequently by the witness himself

after signature made by him shows that the petitioner requested Shri N. Gopalaswami to apologize him and nothing is stated in that note that the petitioner had admitted his guilty regarding the forged signature. Thus, the document which was basis of the departmental proceedings, it's copy was not supplied to him and it is a very material document and non-supply of its copy to the petitioner, materially affects his defence even for cross-examining the witness Shri N. Gopalaswami the petitioner could not effectively cross-examine the witnesses. It can be said that non-supply of copy of this document which was the basis for initiating the proceedings against the petitioner does prejudice the defence of the petitioner and the petitioner has been denied a reasonable opportunity which is against the principles of natural justice.

20. So far as the other documents, report of the Hand writing Expert and the letter dated 16-10-81, the documents mentioned at item no. 7 and 8 mentioned in para 2.1 of the defence statement dated 20-9-1983 is concerned, it is not disputed that the alleged signature of Shri N. Gopalaswami along with his admitted signature were sent for expert's opinion and the Handwriting Expert gave his opinion that the alleged signature of Shri N. Gopalaswami was forged one. The copies of the documents required by the petitioner were also given to the petitioner after conclusion of the inquiry. As the copy of the opinion of the Handwriting Expert was not supplied to the petitioner, the petitioner was not in a position to examine any/or other witness and the Handwriting Expert to prove that the disputed signature was signature of Shri N. Gopalaswami himself and not of any other person. Certain admitted signatures and the disputed signatures were produced before this Court and it appears that except the word "a" in the signature of Shri N. Gopal "a" swami they are not distinguishable to each other. Had the copy of this document been supplied to the petitioner during the inquiry proceedings, the petitioner would have an opportunity to get the disputed signature examined by another Handwriting Expert and would have got the opinion of the Handwriting Expert on the record and non-supply of the copy of the opinion of the Handwriting Expert is also one of the material aspects which affects and prejudices to the defence of the petitioner. It was also necessary for the department to supply copy thereof to the petitioner. So far non-examination of witness Mr. Ved and Ms. Mistry is concerned, the learned counsel for the petitioner submitted that Mr. Ved was enemical against the petitioner and he gave report to the under Secretary Shri

Gopalaswami for transferring him from one place to another place. In this respect Shri N. Gopalaswami admitted in his statement before the Inquiry Officer that he did not remind whether he had put any note for transferring Shri Ved from B. Branch but it was true that Shri Mishra had talked to him regarding behaviour of Shri Ved. It is also admitted that Shri Ved had stated that file was with him and he showed it to the under Secretary. It is also admitted by witness Shri N. Gopalaswami that Under Secretary Shri K.D. Mahida and a clerk from Branch, Shri Ved had come to see him with the file. It is stated that Shri Mishra got inwards the application through the General Duty Clerk, who gave it number 2485 and the subject and the file number were dictated by Shri Mishra himself. File number or inward number on the original application were written by the General Duty Clerk on the dictation of Mr. Mishra the petitioner himself and inward number was given by the General Duty Clerk. Whether it had been actually dictated by the petitioner or not that should have been proved by Ms. Mistry, clerk concerned and not by anybody. It is stated that the inward number was written by the General Duty Clerk Ms. Mistry on the dictation of the petitioner. The question is as to whether this inward number was dictated by the petitioner or by anybody or it was inwards by herself in routine way or she had forgotten to make inward entry. It could be established from the statement of Ms. Mistry and it appears that her statement was recorded during the investigation. That inward number was noted by Ms. Mistry on the dictation of the petitioner. But Ms. Mistry has not been examined. Whether it was negligence on the part of Ms. Mistry in not noting down the inward number or it was an intentional act on the part of the petitioner in getting it registered. The material aspect which could have been proved by the statement of Ms. Mistry during the inquiry. The Inquiry Officer has relied upon the statement of Ms. Mistry as in the point no. 2 the Inquiry Officer has mentioned " Sri Mishra got inwards the application through the General Duty Clerk who gave its number 2485 and the subject and the file number were dictated by Shri Mishra himself." In absence of her statement it cannot be presumed that the inward number was given by Ms. Mistry on the dictation of the petitioner.

21. So far as the statement of Mr. Mahida is concerned, he was informed by Mr. Ved regarding forgery committed by the petitioner and Mr. Mahida and Mr. Ved presented the documents concerned before Shri Gopalaswami. As such, the statement of Mr. Mahida which

was recorded during the investigation the copy thereof should have been supplied to the petitioner.

22. Considering the facts and circumstances of the case, as stated above, non-supply of the documents and non-examination of the witnesses as stated above, prejudiced the defence of the petitioner and he was not able to cross-examine the witnesses effectively and the entire departmental proceedings are vitiated for violation of principles of natural justice. Now question arises whether the department should be afforded an opportunity to start departmental proceedings for proving the charges levelled against the petitioner by providing the copies of the statement of the witness recorded during investigation and examining those witnesses and giving an opportunity to the petitioner for further cross-examination of Mr. N. Gopalaswami. In my view, these petitions deserve to be allowed on technical grounds and hence the department should not be be disentitled to prove the charges against the petitioner after providing reasonable opportunity of defence to the petitioner in consonance of the principles of natural justice.

23. Accordingly, both these petitions are allowed in part and the impugned order of removal dated 9-2-90 as well as impugned order dated 27-6-1986 of the Secretary, General Administration Department, Gujarat State removing the petitioner from service are quashed and set aside and the respondents are directed to reinstate the petitioner in service and status-quo ante which existed before passing the order dated 27-6-1986 and 9-2-90 of the Secretary is restored. Since the petitioner was under suspension before the order of removal was passed, he will continue under suspension the respondents are directed to pay to the petitioner arrears of subsistence allowance payable to him under the Rules from the date of passing the order of removal dated 9-2-90 to the date of his reinstatement in service and thereafter regularly every month until the final order is passed by the disciplinary authority. The Disciplinary Authority is directed to continue the inquiry, by examining the witnesses named above and giving reasonable opportunity of cross-examination to the petitioner and complete it expeditiously as far as possible preferably within 3 months from the date of presentation of a certified copy of this order in the light of the observations made in this judgment. Rule is made absolute to the aforesaid extent, with no order as to costs, in both these petitions.

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/JVSatwara/